

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

KIM DOTCOM, et al.,

Defendants.

)
)
) The Honorable Liam O'Grady
)
)
) Criminal No. 1:12-CR-3
)
)
)

**DECLARATION OF IRA ROTHKEN IN SUPPORT OF SPECIALLY APPEARING
DEFENDANTS' FURTHER RESPONSE IN SUPPORT OF THEIR LETTER TO THE
COURT DATED DECEMBER 4, 2013**

I, Ira Rothken, declare:

1. The information contained in this declaration is within my personal knowledge, and, if called upon, I would testify as follows.

2. I am the founder and managing partner of the Rothken Law Firm, and I am counsel to Defendants Kim Dotcom and Megaupload Limited in the above-captioned matter.

3. I personally attended the hearing on the U.S. Government's application to lift the non-publication order regarding the Record of the Case, which was held on December 5, 2013 (December 4, 2013 in the United States) in the North Shore District Court in Auckland, New Zealand.

4. The hearing was open to the public and press were present at the hearing.

5. Christine Gordon QC, a senior and experienced counsel for the Crown who represents the United States' interests before the New Zealand court, did not in any way suggest to the Court that the hearing should be *in camera*, or that the media should be excluded. Nor did she request that the court file on this point to be sealed until further order of the court.

6. To the contrary, during the hearing, counsel representing the United States' interests discussed the content of Judge Liam O'Grady's November 22, 2013 sealed and *ex parte* order in open court, in the presence of the public and the press.

7. A reporter in New Zealand, David Fisher, subsequently reported on the hearing and on the content of the November 22, 2013 order. *See* Fisher, David, "New Moves to Detail Dotcom Allegations," *The New Zealand Herald*, December 11, 2013, available at http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=11170650. Mr. Fisher, a well-known journalist, was present in the courtroom and counsel for the Crown/United States did not seek to have Mr. Fisher excluded during the hearing.

8. During the hearing, the New Zealand court declined to rule on the United States Government's application to lift the non-publication order until such time as it can discern whether Judge O'Grady will "act in some manner" to afford Defendants Dotcom and Megaupload the opportunity to be heard in opposition to the U.S. Government's request.

9. The New Zealand court set a status conference on the U.S. Government's application for Friday, December 13, 2013 (Thursday December 12, 2013 in the United States).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on December 10, 2013, at Novato, California.

A handwritten signature in black ink, appearing to read 'Ira Rothken', written over a horizontal line.

Ira Rothken